(1974) 10 MAD CK 0008

In the Madras High Court

Case No : Appeal Against Order No. 297 etc. of 1973 and 540 etc. of 1974

G. Rathnaswami APPELLANT

Vs

Syed Meeral Beevi and Others RESPONDENT

Date of Decision : 01-10-1974

Acts Referred:
Motor Vehicles Act, 1988 — Section 95, 95(1), 95(2)

Citation : (1975) ILR (Mad) 579

Hon'ble Judges : Varadarajan, J;Kailasam, J

Bench : Division Bench

Advocate : V. Ratnam, for the Appellant; S. Padmanabhan, Robert Chellaya, Arumugham for Kurian Armugham Joseph and V.R. Gopalan, for the Respondent

Judgement

Kailasam, J.—These four appeals arise out of a motor accident which took place on the morning of 25th November 1969 between Nager-

coil and Tirunelveli Junction. When a bus belonging to the Tamil Nadu State Transport, MDK 2680 and a lorry MDT 7196, dashed against each

other caused injuries to one Changalvaraya Cetty, claimant in Claim Petition No. 8 of 1971 and the death of one R.A.M. Allaudeen Junior

Engineer in the Office of the Public Health Engineering Division, Palayamcottai. Changalvaraya Setty, who was traveling in the bus and was injured

in the accident, is the claimant in C. P. No. 8 of 1971 and the wife, the father and mother of the deceased Alaudeen, are the claimants in C. P. No.

12 of 1971.

2. In C.P. No. 8 of 1971 Changalvaraya Setty claimed a compensation of Rs. 65,000 for the injuries that were caused to him; whereas the wife

and parents of the deceased Alaudeen claimed Rs. 1,79,350 as compensation.

3. The Claims Tribal awarded a compensation of Rs. 10,000 to Changalvaraya

Setty, holding Respondents 1 and 2, the Tamil Nadu State

Transport, Madras, and G. Rathnaswami Nadar, the owner of the lorry liable jointly and severally for the claim, subject to the maximum liability of

the Respondents 3 and 4, which were the insurance companies who had issued policies to the second Respondent, Ratnasami Nadar. In C. P.

No. 12 of 1971 the Tribunal awarded a sum of Rs. 1,00,000 as compensation out of which it found the insurance companies, Respondents 3 and

4, liable to pay to the extent of Rs. 20,000 each and that the balance payable by Respondents 1 and 2, the State of Tamil Nadu, and the owner of

the lorry G. Rathnasami, jointly and severally,

4. Civil Miscellaneous Appeal No. 458 of 1973 is an appeal by the owner of the lorry against the award of Rs. 10,000 in C. P. No. 8 of 1971,

challenging his liability and the amount awarded. The two insurance companies have filed Civil Miscellaneous Appeal No. 463 of 1972 against the

award of Rs .10,000 to Changalvaraya Setty in C. P. No. 8 of 1971, contending that the accident was not due to their negligence and that they are

not liable to pay, and that in any event the compensation awarded is excessive. The State of Tamil Nadu has also preferred an appeal against the

award in C.P. No. 8 of 1971 (S.R. No. 34047 73) which is Civil Miscellaneous Appeal No. 541 of 1974.

5. As against the award of compensation in C. P. No. 12 of 1971 the claimants as well as the owner of the lorry, the insurance companies and the

State have all filed appeals. Civil Miscellaneous Appeal No. 297 of 1973 is by the owner of the lorry, Civil Miscellaneous No. 464 of 1973 is by

the two insurance companies Civil Miscellaneous Appeal No. 542 of 1974 is by the claimants and Civil Miscellaneous Appeal No. 540 of 1974 is

by the State.

6. The evidence as to the accident is given by one Alwar Iyengar who was examined as P.W.2. in Claim Petition No. 12 of 1971, who was a co-

passenger who travelled in the same bus along with the deceased Allaudeen, P. W. 2 is a retired Deputy Collector and also an First Class

Magistrate, Tirunelveli, and also the agent. Honorary of Nanguneri Mutt at Nanguneri. According to this witness, the accident was due to the rash

and negligent driving of both the drivers of the state Transport bus and the lorry which came at high speed and collided with each other more or less in the middle of the road. This testimony was accepted by the Claims Tribunal and we do not see any reason for not accepting the test more of

P.W. 2 who was traveling in the bus along with the deceased Allaudeen. He is a respectable witness and there are no grounds for rejecting his

evidence.

7. The evidence on behalf of the Respondents were given by R. Ws. 1 to 3. R. W. 1 is the driver of the bus and R. W. 3 is the cleaner of the lorry,

and both of them are blaming the other for the accident. The Tribunal rejected their testimony rightly. On the evidence, we have no difficulty in

coming to the conclusion that the accident took place due to the negligent driving of both the lorry and the State Transport bus.

8. Now, the question of the quantum of compensation payable remains. In Claim Petition No. 12 of 1971, the claimants are the wife and the

parents of the deceased Allaudeen. Allaudeen was a Junior Engineer, aged 28, in the Office of the Public Health Engineering Department,

Palayancottai. According to P. W. 1, who is an employee in the Public Health Engineering Department, Allaudeen was drawing a salary of Rs.

413, Rs. 255 being the pay, Rs. 146 being the dearness allowance and Rs. 12 being the house rent allowance on the date of his death. The scale in

which Allaudeen was, went upto Rs. 375 as Junior Engineer and he had opportunities of promotion in the regular course of service as Executive

Engineer, Superintending Engineer, etc, though with some good work and a bit of luck he might even became the Chief Engineer. The scale of pay

of Chief Engineer is Rs. 1,700-100-2,000. The pay of intermediate post vary from Rs. 500 to Rs 1,700. Admittedly Allaudeen had 27 years of

service his retirement being at the age of Rs. 55. His salary would have gone up as also the dependency of the family on him Working out an

average, we would fix the dependency of the wife and the parents at Rs. 5,000 a year. As a lump sum payment is being made and taking into

account the interest that the lump sum amount would fetch, we feel that a sum of Rs. 60,000 would be appropriate towards all the claims that are

made by the parties.

9. In Claim Petition No. 8 of 1971 the claimant is the injured. Changalvaraya Chetty who was employed as travelling representative under Messrs

Narayan Silk House, Bangalore, and getting a salary of Rs. 170 per mensem.

According to him, he was able to save Rs. 50 per mensem on

travelling allowances. According to the Doctor (Ven-katakrishnan), who was examined as P.W. 2 (in Claim Petition No. 8 of 1971), the sustained

a multiple fracture of right thigh, left and right leg and was an in-patient in the Tiru-nelveli Medical College Hospital, Palayamcottai, till 12th

December 1969. The evidence of the Doctor does not disclose any permanent disablement. The injured claimed Rs. 2,500 for pain and suffering

Rs. 2,500 towards transport charges, Doctor''s fees extra nourishment, etc., in addition to Rs. 60,000 claimed by him towards the loss of income.

There is no satisfactory evidence as to the actual loss which he sustained. It is stated that he was not able to attend to his. work from 25th

November 1969 to 11th April 1970, a period of about 6 1/2 months. As there is no permanent disability apart from certain pain which he gets

when he moves about, he will not be entitled to any compensation on account of permanent disablement. But he would be entitled to compensation

on the ground of pain and suffering and the actual expenses incurred by him towards transport charges, cost of medicines, Doctor''s fee, etc. which

he, had himself claimed at Rs. 1,500. We feel that a sum of Rs. 7,500 in all would be ample compensation for the injury, the pain and suffering,

actual expenses incurred etc. We fix the amount accordingly.

10. On behalf of the insurance companies an argument was advanced that their total liability cannot exceed Rs. 20,000 in all. The learned Counsel

referred to Section 95 of the Motor Vehicles Act and submitted that the insurance liability in order to comply with the requirements of chapter 8, is

only to the extent specified in Sub-section (2) which limits the liability in the case of a goods vehicle u/s 95(2)(a) to Rs. 20,000. This liability of Rs.

20,000 according to the learned Counsel is the limit of the insurer, whether the owner had insured it with several companies or with a single

company. We are unable to accept this contention. Section 95(1) speaks of a policy of insurance. It requires that a policy of insurance must be a

policy which satisfies the conditions, namely, which should cover a liability in a case u/s 95(2)(a) to the extent of Rs. 20,000. The limit of Rs.

20,000 is as regards a policy of insurance. If there are several policies of insurance as regards the same vehicle, in regard to each policy of

insurance the liability will be Rs. 20,000. Section 95(2) also runs as follows:

95 (2) Subject to the proviso to Sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the

following limits, namely

(a) Where the vehicle is a goods vehicle a limit of twenty thousand rupees in all, including the liabilities, if any, arising under the Workmen''s

Compensation Act, 1923 (3 of 1923) in respect of the death of, or bodily injury to, employees (other than the driver), not exceeding six in number,

being carried in the vehicle.

(b) Where the vehicle is a vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,

in respect of persons other than passengers carried for hire or reward, a limit of twenty thousand rupees; and in respect of passengers a limit of

twenty thousand rupees in all and four thousand rupees in respect of an individual passenger, if the vehicle is registered to carry not more that six

passengers excluding the driver; and

(c) where the vehicle is a vehicle of any other class, the amount of the liability incurred.

The limit is not as regards one accident, but as regards a policy of insurance covering a liability in respect of one accident. If there are several

policies as regards one vehicle, the limit of Rs. 20,000 is confined to a policy of insurance. There is no prohibition under the Act against the owner

taking any number of policies. The owner, with a view to avoid a personal liability over the ceiling set against the insurance company, may take

several insurance policies so that insurance may indemnity any compensation that may be payable by him. Condition 5 of the conditions attached to

the Vanguard Insurance Company Ltd. policy (condition 7 of New India Assurance Company Limited, Policy) provides that:

If at the time any claim arises under this policy there is any other existing Insurance covering the same liability the Company shall not be liable to

pay or contribute more than its rateable proportion of any compensation costs or expenses. Provided always that nothing in this Condition shall

impose on the Company any liability from which but for this condition it would have been relieved under the Provisions of proviso (a) of paragraph

3 of this Policy.

Paragraph 3: In terms of and subject to the limitation of this policy the Company will indemnify any Driver who is driving the Motor Vehicle on the

Insured''s order or with his permission provided that such Driver:

(a) is not entitled to indemnify under any other Policy.

This condition enables rateable liability as against the several companies and does not suggest that the total liability of the insurance company is

restricted. We do not find any substance in the stand taken on behalf of the insurance companies. We therefore, find that the claimants in Claim

Petition No. 12 of 1971 are entitled to a sum of Rs. 60,000 of which the parents will be entitled to Rs. 10,000 at the rate of Rs. 5,000 each and

the wife to the balance Rs. 50,000.

11. So far as the claimant Changalvaraya Setty is concerned, the insurance companies will be liable to pay a sum of Rs. 7,500 at the rate of Rs.

3,750 each and so far as the claimants in C. P. No. 12 of 1971 are concerned the insurance companies will each pay Rs. 10,375, The balance will

be paid by the Tamil Nadu State Transport, Madras and Rathnasami Nadar, Respondents 1 and 2. As between them, their liabilities will be half

and half. But the claimants in C. P. No. 12 of 1971 will be entitled to proceed against any of the persons that are liable, as the liability of the

insurance companies, the State and the owner of the lorry are joint and several. Any money already deposited by the insurance companies towards

any of the claims will be taken into account.

12. The result is, the appeal Civil Miscellaneous Appeal No. 543 of 1974 by the claimants in Claim Petition No. 12 of 1971. (S.R. No. 43144 of

1973) is dismissed and there will be no order as to costs. Civil Miscellaneous Appeal Nos. 463 and 464 of 1973 by the insurance companies in

both the claim petitions are also dismissed. Civil Miscellaneous Appeal Nos. 297 and 458 of 1973 by the owner of the lorry in both the claim

petitions are allowed in part. The appeals by the State of Tamil Nadu against the award in Claim Petition No. 8 of 1973 (S.R. No. 34047 of

1973) Civil Miscellaneous Appeal No. 541 of 1974 and in Claim Petition No. 12 of 1973 (S.R. No. 34198 of 1973) Civil Miscellaneous Appeal

No. 540 of 1974 are also allowed in part.

